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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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408	7590	02/08/2005	EXAMINER	
LUEDEKA, NEELY & GRAHAM, P.C.			FERGUSON, MICHAEL P	
P O BOX 1871			ART UNIT	
KNOXVILLE, TN 37901			PAPER NUMBER	
			3679	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,916

Applicant(s)

BURDICK, BRETT R.

Examiner

Michael P. Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 and 16 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-13 is/are rejected.
- 7) ☒ Claim(s) 6 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7 and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Crum (US 4,692,567).

As to claim 1, Crum discloses a fence spacer **10** for maintaining a pair of fence wires in a desired common plane and spaced a desired distance apart, the spacer comprising a substantially non-flexing spacer body **28,30** (a substantial portion of spacer body **28,30** not being flexed during installation; and the entire spacer body not being flexed prior to installation) having first and second parallel edges positionable to be oriented substantially parallel to the desired common plane of the wires; a first pair of generally S-shaped tabs **46,50** along the first edge; a second pair of generally S-shaped tabs **48,50** along the first edge and spaced apart from the first pair of tabs; a third pair of generally S-shaped tabs **54,58** located along the second edge; and a fourth pair of generally S-shaped tabs **56,58** along the second edge and spaced apart from the third pair of tabs, wherein the spacer is installed by snap-fitting the first and second pair of tabs onto a first one of the wires and snap-fitting the third and fourth pair of tabs onto a second one of the wires, with the first and second pairs of tabs maintaining the first wire

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closely adjacent the first edge and the third and fourth pairs of tabs maintaining the second wire closely adjacent the second edge (Figures 1, 3 and 9).

As to claim 2, Crum discloses a fence spacer **10** wherein each tab **46,48,50,54,56,58** defines a channel for cradling a portion of the wire (Figure 1).

As to claim 3, Crum discloses a fence spacer **10** wherein the spacer body **28,30** is generally X-shaped (Figure 1).

As to claim 4, Crum discloses a fence spacer **10** wherein the spacer body **28,30** is generally rectangular (Figure 1).

As to claim 5, Crum discloses a fence spacer **10** comprising first **22**, second **22**, third **24**, and fourth **24** arms extending from the spacer body **28,30**, with the first pair of tabs **46,50** extending from the first arm, the second pair of tabs **48,50** extending from the second arm, the third pair of tabs **54,58** extending from the third arm, and the fourth pair of tabs **56,58** extending from the fourth arm (Figure 1).

As to claim 7, Crum discloses a fence spacer **10** for maintaining a pair of fence wires in a desired common plane and spaced a desired distance apart the spacer comprising a spacer body **28,30** and a plurality of first loops **46,48,50** configured to cradle a first one of the fence wires and a plurality of second loops **54,56,58** configured to cradle a second one of the fence wires (Figures 1, 3 and 9).

As to claim 9, Crum discloses a fence spacer **10** wherein the spacer body **28,30** is generally X-shaped (Figure 1).

As to claim 10, Crum discloses a fence spacer **30** wherein the spacer body **28,30** is generally rectangular (Figure 1).

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As to claim 11, Crum discloses a fence spacer **10** for maintaining a pair of fence wires in a desired common plane and spaced a desired distance apart, the spacer comprising a spacer body **28,30** having first and second parallel edges positionable to oriented to be substantially parallel to the desired common plane of the wires; a first wire retaining member **46** along the first edge; a second wire retaining member **48** along the first edge and spaced apart from the first wire retaining member; a third wire retaining member **54** located along the second edge; and a fourth wire retaining member **56** along the second edge and spaced apart from the third wire retaining member, wherein the spacer is installed by snap-fitting the first and second wire retaining members onto a first one of the wires and snap-fitting the third and fourth wire retaining members onto a second one of the wires, with the first and second wire retaining members maintaining the first wire closely adjacent the first edge and the third and fourth wire retaining members maintaining the second wire closely adjacent the second edge (Figures 1, 3 and 9).

As to claim 12, Crum discloses a spacer **10** wherein the wire retaining members **46,48,54,56** comprise S-shaped tabs (Figure 3).

As to claim 13, Crum discloses a spacer **10** wherein the wire retaining members **46,48,54,56** comprise loops for cradling the wires (Figure 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson (US 4,093,187).

As to claim 7, Robinson discloses a fence spacer **10** for maintaining a pair of fence wires in a desired common plane and spaced a desired distance apart the spacer comprising a spacer body **20** and a plurality of first loops **18** configured to cradle a first one of the fence wires and a second loop **18** configured to cradle a second one of the fence wires (Figures 1-3).

Robinson fails to disclose a fence spacer comprising a fourth wire retaining member along the second edge and spaced apart from the third wire retaining member.

The applicant is reminded that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence spacer as disclosed by Robinson to have a fourth wire retaining member as such practice is a design consideration within the skill of the art.

As to claim 8, Robinson discloses a spacer **10** comprising a plurality of slots extending through the spacer body, wherein each of the first and second loops **18** substantially spans one of the slots (Figure 1).

As to claim 9, Robinson fails to disclose a fence spacer wherein the spacer body is generally X-shaped.

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The applicant is reminded that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence spacer as disclosed by Robinson to be generally X-shaped as such practice is a design consideration within the skill of the art.

As to claim 10, Robinson discloses a fence spacer **10** wherein the spacer body **20** is generally rectangular (Figure 1).

As to claim 11, Robinson discloses a fence spacer **10** for maintaining a pair of fence wires in a desired common plane and spaced a desired distance apart, the spacer comprising a spacer body **10** having first and second parallel edges positionable to oriented to be substantially parallel to the desired common plane of the wires; a first wire retaining member **18** along the first edge; a second wire retaining member **18** along the first edge and spaced apart from the first wire retaining member; a third wire retaining member **18** located along the second edge; wherein the spacer is installed by snap-fitting the first and second wire retaining members onto a first one of the wires and snap-fitting the third wire retaining member onto a second one of the wires, with the first and second wire retaining members maintaining the first wire closely adjacent the first edge and the third wire retaining member maintaining the second wire closely adjacent the second edge (Figures 1-3).

Robinson fails to disclose a fence spacer comprising a fourth wire retaining member along the second edge and spaced apart from the third wire retaining member.

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The applicant is reminded that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence spacer as disclosed by Robinson to have a fourth wire retaining member as such practice is a design consideration within the skill of the art.

As to claim 13, Robinson discloses a spacer 10 wherein the wire retaining members 18 comprise loops for cradling the wires (Figure 2).

Allowable Subject Matter

5. Claims 15 and 16 are allowed.

6. Claims 6 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed September 20, 2004 have been fully considered but they are not persuasive.

As to claim 1, Attorney argues that:

Crum does not disclose a fence spacer comprising a *substantially non-flexing* spacer body.

Examiner disagrees. As to claim 1, Crum discloses a fence spacer 10 comprising a substantially non-flexing spacer body 28,30 (a substantial portion of

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spacer body **28,30** not being flexed during installation; and the entire spacer body not being flexed prior to installation; Figures 1)

As to claims 7 and 11, Attorney argues that:

Robinson does not disclose a fence spacer comprising *a fourth wire retaining member along the second edge and spaced apart from the third wire retaining member.*

Examiner disagrees. As to claims 7 and 11, Robinson fails to disclose a fence spacer **10** comprising a fourth wire retaining member along the second edge and spaced apart from the third wire retaining member **18** (Figure 1).

The applicant is reminded that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence spacer as disclosed by Robinson to have a fourth wire retaining member as such practice is a design consideration within the skill of the art.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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